

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

**UNITED STATES of AMERICA,**

**Plaintiff,**

**v.**

**ANGEL VELAZQUEZ,**

**Defendant.**

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**8:02CR382**

**MEMORANDUM AND ORDER**

This matter is before the court on initial review of defendant's "Motion Under 28 U.S.C. § 2255 to Vacate, Set Aside, or Correct Sentence by a Person in Federal Custody" (§ 2255 motion) (Filing No. 143), and his motion for leave to proceed in forma pauperis (Filing No. 144).

Under Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts*, the court will conduct initial review of the issues raised in defendant's § 2255 motion and his motion to amend. Rule 4(b) of the *Rules Governing Section 2255 Proceedings for the United States District Courts* requires initial review of a § 2255 motion, and describes the initial review process:

The motion, together with all the files, records, transcripts, and correspondence relating to the judgment under attack, shall be examined promptly by the judge to whom it is assigned. If it plainly appears from the face of the motion and any annexed exhibits and the prior proceedings in the case that the movant is not entitled to relief in the district court, the judge shall make an order for its summary dismissal and cause the movant to be notified. Otherwise, the judge shall order the United States Attorney to file an answer or other pleading within the period of time fixed by the court or to take such other action as the judge deems appropriate.

After a jury trial, defendant was found guilty on Count I of the Indictment charging him with conspiracy with intent to distribute methamphetamine in violation of 21 U.S.C. §§ 846, 841(a)(1) and (b)(1), 851, Count III of the Indictment charging him with felon in possession of a firearm in violation of 18 U.S.C. § 922(g)(1) and 924(a)(2), and Counts IV, V, VI, and VII of the Indictment charging him with possession with the intent to distribute methamphetamine in violation of 21 U.S.C. §§ 841(a) and (c). The court sentenced defendant to the custody of the Bureau of Prisons for 360 months for Count I, 10 years for Count III, and 20 years for each of Counts IV, V, VI, and VII all to run concurrently followed by 10 years of supervised release on Count I, 3 years on Count III, and 6 years each as to Counts IV, V, VI, and VII all to run concurrently. Defendant filed a direct appeal arguing that the jury had insufficient evidence to convict him, and that the court erred by overruling his motion in limine and enhancing his sentence based on prior convictions. The Eighth Circuit affirmed defendant's conviction and sentence. *United States of America v. Velazquez*, No. 04-2706/2754 (8th Cir. February 16, 2005).

On May 15, 2006 the defendant filed this § 2255 motion. The United States shall answer the defendant's claims raised in his motion. In addition to any other issues raised in the Answer, the United States shall address whether his claims are barred by procedural default, waiver, or untimeliness.

IT IS ORDERED:

1. That defendant's motion for leave to proceed in forma pauperis (Filing No. 144) is granted;
2. That upon initial review, the court finds and concludes that summary dismissal of the defendant's § 2255 motion (Filing No. 143) is not appropriate;

3. That by July 17, 2006 the United States shall answer or otherwise respond to the defendant's § 2255 motion, and shall file an accompanying brief; and

4. That by August 17, 2006 the defendant may file a reply brief.

DATED this 14th day of June, 2006.

BY THE COURT:

s/ Joseph F. Bataillon

JOSEPH F. BATAILLON

United States District Judge